

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 3<sup>rd</sup> November, 2017**

+ **C.R.P. 233/2017**

**RAJNI BEDI**

**..... Petitioner**

Through Mr.R.K.Sahni, Advocate

versus

**DESH RAJ CHOPRA AND ANR**

**..... Respondents**

Through None.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**CM No. 39007/2017 (for exemption)**

1. Allowed, subject to just exceptions.
2. Application stands disposed of.

**C.R.P.No. 233/2017 & CM No.39006/2017 (for stay)**

3. This revision petition under Section 115 of the CPC impugns the order [dated 19<sup>th</sup> August, 2017 in CS No.1124/2016 of the court of Additional District Judge (Shahdara), Karkardooma Court, Delhi] deciding a preliminary issue framed in the suit in favour of the respondent no.1/plaintiff and against the petitioner/defendant no.2.

4. The counsel for the petitioner/defendant no.2 has been heard.

5. The preliminary issue which has been decided against the petitioner/defendant no.2 was as under:-

*“Whether the defendants prove that the suit is barred by limitation? OPD.”*

6. The respondent no.1/plaintiff instituted the suit, from which this petition arises, pleading (i) that the respondent/plaintiff is the owner in possession of property no.D-54, New Gobind Pura, Gali No.5 & 4 Near

Gandhi Park, Delhi; (ii) that the mother of the respondent no.1/plaintiff was also residing in the ground floor of the said house; (iii) that the respondent no.2/defendant no.1 Sudesh Bhola, being the sister of the respondent no.1/plaintiff, took the mother to her own house in an attempt to grab the property of the respondent no.1/plaintiff; (iv) that the respondent no.2/defendant no.1 also brought some building material to the site to carry on some construction in the property and of which police complaint was made by the respondent no.1/plaintiff; (v) that the respondent no.1/plaintiff, in the year 2009, also instituted a suit for restraining the respondent no.2/defendant no.1 from raising any unauthorised construction in the property aforesaid and for demolition of the construction already carried out; and, (vi) that the petitioner/defendant no.2 became party in the aforesaid suit claiming that she had purchased a portion of the property from the respondent no.2/defendant no.1.

7. On the aforesaid pleadings in the suit the following reliefs are claimed:-

- (i) Mandatory injunction directing the respondent no.2/defendant no.1 and petitioner/defendant no.2 to file the irrevocable general power of attorney and agreement to sell executed by respondent no.2/defendant no.1 in favour of petitioner/defendant no.2; (ii) Declaration that the said documents whereunder the petitioner/defendant no.2 claims to be the owner of the property were null and void; (iii) Permanent injunction restraining the respondent no.2/defendant no.1 and the petitioner/defendant no.2 from creating any third party interest in the property, and, (iv) recovery of possession of the property in possession of

petitioner/defendant no.2.

8. Counsel for the petitioner/defendant no.2, on enquiry, states:-

i) that the total size of property no. D-54, aforesaid is 100 sq. yards of which the petitioner/defendant no.2 is in possession of 27 sq. yards by purchase vide general power of attorney and agreement to sell and other documents from the respondent no.2/defendant no.1;

ii) that though the respondent no.1/plaintiff in the plaint has claimed being the owner of the property but in fact it was the mother of the respondent no.1/plaintiff and the respondent no.2/defendant no.1, who was the owner of the property who had earlier executed general power of attorney and agreement to sell etc. with respect to the property in favour of the respondent no.1/plaintiff; the said general power of attorney and agreement to sell etc. in favour of the respondent no.1/plaintiff were cancelled by the mother aforesaid and the mother thereafter executed general power of attorney and agreement to sell etc. with respect to 27 sq. yards of the property in favour of the respondent no.2/defendant no.1 who has executed further general power of attorney and agreement to sell in favour of petitioner/defendant no.2.

9. It was/is the plea of the petitioner/defendant no.2 that the petitioner/defendant no.2 in the suit first filed by the respondent no.1/plaintiff for permanent injunction had disclosed the general power of attorney and agreement to sell in her favour and the suit from which this petition arises, for recovery of possession and declaration with respect to the documents in favour of the petitioner/defendant no.2, had been instituted after more than three years from the aforesaid disclosure.

10. The learned Additional District Judge has decided the preliminary

issue against the petitioner/defendant no.2 relying on *Ashok Kumar Vs. Mohd. Rustam* (2016) 227 DLT 385 of this Court.

11. Counsel for the petitioner/defendant no.2 contends that the learned Additional District Judge has wrongly relied on the judgment aforesaid. It is argued that the said judgment is concerned with a suit by the plaintiff for declaration of his own title of the property and for recovery of possession and in which context this Court has held that even if the relief of declaration has been claimed after more than three years from the date when the cause of action therefor had arisen, the suit would be within time for the reason of the suit, in so far as for the relief of recovery of possession, being within time. It is contended that in the present case, the respondent no.1/plaintiff is not seeking declaration of his own title to the property but is seeking declaration qua the documents with respect to the property in favour of the petitioner/defendant no.2 and the relevant Article of the schedule to the Limitation Act, 1963 would be Article 59 and which provides for the suit for cancellation of documents for rescission of documents to be filed within three years when the documents came to the knowledge of the plaintiff. It is yet further contended that in the present case, the General Power of Attorney and Agreement to Sell executed by the respondent no.2/defendant no.1 in favour of the petitioner/defendant no.2 qua which the relief of declaration is sought, came to be in the knowledge of the respondent no.1/plaintiff more than three years prior to the institution of the suit.

12. I have at the outset enquired from the counsel for the petitioner/defendant no.2 as to how the General Power of Attorney and Agreement to Sell executed by respondent no.2/defendant no.1 in favour of the petitioner/defendant no.2 with respect to 27 sq. yards of the property

would constitute documents of title. Though the Division Bench of this Court in *Asha M. Jain Vs. Canara Bank* (2001) 94 DLT 841 held that such documents were to be accepted as documents of title owing to the widespread practice of transfer of immovable property through the said documents but the Supreme Court in *Suraj Lamp Industries Private Limited Vs. State of Haryana* (2012) 1 SCC 656 overruled the said judgment of Division Bench of this Court and held that the General Power of Attorney and Agreement to Sell do not constitute documents of title. Once it is so, the same do not vest any title in the petitioner / defendant no.2 in the said 27 sq. yds. of immovable property and the petitioner / defendant no.2 on the basis thereof cannot defend the claim for recovery of possession thereof, if otherwise the respondent no.1 / plaintiff were to be found entitled thereto. I have also wondered the necessity for the respondent no.1/plaintiff to seek the relief of declaration with respect to the said documents.

13. I have further enquired from the counsel for the petitioner/defendant no.2 that if the claim for recovery of possession is within time, and qua which no plea has been taken or argument urged, how can the said claim be barred by time for the reason of the respondent no.1/plaintiff having also sought the relief of declaration of documents which are no documents of title and whereunder the petitioner/defendant no.2, if otherwise liable for delivery of possession, cannot retain possession.

14. Counsel for the petitioner/defendant no.2 responds that if that be the position in law, then even the respondent no.1/plaintiff also has no title to the property, since the respondent no.1/plaintiff is also claiming title under the General Power of Attorney and Agreement to Sell in his favour from his mother.

15. The respondent no.1/plaintiff, in the plaint, has claimed himself to be the owner, without disclosing the documents vide which he has become the owner. Even if it is the plea of the petitioner/defendant no.2 and the respondent no.2/defendant no.1 in the suit that the mother is the owner, the respondent no.1/plaintiff is one of the heirs of the mother.

16. Be that as it may, the said controversy is not subject matter of this petition. I may only state that a perusal of the issues framed in the suit shows the issues to have not been specifically framed on the controversy which arises for consideration.

17. Thus, the dispute by the petitioner/defendant no.2 at this stage, of the title of the respondent no.1/plaintiff is not of concern. If the respondent no.1/plaintiff succeeds in the relief claimed of possession, he cannot be denied the same for the reason of the General Power of Attorney and Agreement to Sell executed with respect to the property.

18. The principle contained in *Ashok Kumar* supra that in a suit for recovery of possession and declaration, the relief of declaration being an ancillary relief, limitation would be governed by the limitation provided for the relief of possession and not by limitation provided for the relief of declaration, would apply to the present case also where the declaration claimed is not with respect to the title of plaintiff but with respect to title set up by the defendant. If the respondent no.1/plaintiff is entitled to delivery of possession, the mere fact that the relief claimed of declaration with respect to Power of Attorney and Agreement to Sell set up by the petitioner/defendant no.2 is barred by time, would not matter.

19. Counsel for the petitioner/defendant no.2 has then argued that the General Power of Attorney in the present case is for consideration.

20. The same, even if making the said General Power of Attorney irrevocable, would only constitute the petitioner/defendant no.2 as Attorney of the respondent no.2/defendant no.1 with respect to the property. However, if it were to be found in the suit that the respondent no.2/defendant no.1 had no right in the property, the execution of the said General Power of Attorney by the respondent no.2/defendant no.1 in favour of the petitioner/defendant no.2 would be of no avail and would not come in the way of the petitioner/defendant no.2 being liable for delivery of possession or a decree for possession being passed in favour of the respondent no.1/plaintiff.

21. Though in the case, where the title to the property has passed and without setting aside whereof the relief of possession cannot be granted, the matter may not be covered by *Ashok Kumar* but in the present case since no title is found to have passed in favour of the petitioner/defendant no.2 under the General Power of Attorney and Agreement to Sell, the claim of the respondent no.1/plaintiff for recovery of possession cannot be knocked out on the ground of relief of declaration with respect to General Power of Attorney and Agreement to Sell being barred by time.

22. Thus, there is no merit in the petition.

23. Dismissed.

No costs.

**RAJIV SAHAI ENDLAW, J**

**NOVEMBER 03, 2017**

**mw..**

*(corrected and released on 28<sup>th</sup> December, 2017).*